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11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

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14 In re: ) Case No. 09-51900 ASW  
15 BENYAM and PAULA R. MULUGETA, ) CHAPTER 11  
16 )  
17 Debtors. ) **MOTION TO VACATE  
CONFIRMATION ORDER**  
18 )  
19 ) **Date: December 4, 2014**  
20 ) **Time: 3:00 p.m.**  
21 ) **Location:**  
22 )       United States Bankruptcy Court  
23 )       280 S. First St., Room 3020  
24 )       San Jose, CA 95113  
25 )  
26 )

27 COMES NOW, Campeau Goodsell Smith (“CGS”) and submits the following Motion  
28 to Vacate Confirmation Order (“Motion”) in order to vacate the Order Confirming Debtors’  
Plan Of Reorganization (“Confirmation Order”)(Docket#887) as follows:

29 **I. Summary of Motion.**

30 The Confirmation Order must be vacated because it was secured by (1) mistake,  
31 inadvertence, surprise, or excusable neglect or (2) fraud, misrepresentation, or misconduct by  
32 Debtors (and Debtors’ daughter) regarding funding of the plan on the effective date.

33 Specifically, Debtors secured the Confirmation Order on representations in (1) Debtors’  
34 Proposed Combined Plan of Reorganization and Disclosure Statement (Docket#868) (“Plan”)  
35 that “The Effective Date payments of approximately \$83,000 will be advanced by Debtors’  
36 daughter. She is successfully employed, has access to the funds from her savings, and is

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37 MOTION TO VACATE CONFIRMATION ORDER

1 committed to helping her parents.” (Plan, page 20; see also, page 25 and 26); (2) the  
2 Declaration of Debtors’ Daughter In Support of Confirmation (Docket#877) (“Daughter’s  
3 Declaration”) that “I can come up with the \$83,000 they need for Administrative Claims  
4 from my savings. I am aware that upon confirmation . . . they must deposit the sum of  
5 approximately \$83,000 at Effective Date. I am ready, willing, and able to make that deposit  
6 (Daughter’s Declaration, page 1, line 23-page 3, line 2), and (3) the Declaration of Debtor In  
7 Support of Confirmation (Docket#876) (“Debtors’ Declaration”) that “My daughter  
8 Tsegereda Mulugeta . . . From her savings, she has agreed to pay the Effective Date  
9 payments of approximately \$83,000 . . .” (Debtors’ Declaration, page 2, paragraph 3).

10 The representations were not even close to accurate or true when made or currently.

11 As discussed below, the Effective Date of the Confirmed Plan was September 15,  
12 2014 and the payment of administrative claim was due on or before October 10, 2014. Yet,  
13 Debtors did not make payment on CGS’s administrative claim (Docket#835).

14 **II. Factual Background.**

15 As this court is fundamentally familiar with the five year history of this case, only a  
16 more recent history will be noted.

17 On July 30, 2014 Debtors filed Debtors’ Proposed Combined Plan of Reorganization  
18 and Disclosure Statement (Docket#868) (“Plan”) which specifically represented to the court  
19 and creditors that “The Effective Date payments of approximately \$83,000 will be advanced  
20 by Debtors’ daughter. She is successfully employed, has access to the funds from her  
21 savings, and is committed to helping her parents.” (Plan, page 20; see also, page 25 and 26).

22 On September 2, 2014 Debtors filed the Declaration of Debtor In Support of  
23 Confirmation (Docket#876) (“Debtors’ Declaration”) which specifically represented to the  
24 court and creditors that “My daughter Tsegereda Mulugeta . . . From her savings, she has  
25 agreed to pay the Effective Date payments of approximately \$83,000 . . .” (Debtors’  
26 Declaration, page 2, paragraph 3).

27 On September 2, 2014 Debtors filed the Declaration of Debtors’ Daughter In Support  
28 of Confirmation (Docket#877) (“Daughter’s Declaration”) which specifically represented to

1 the court and creditors that "I can come up with the \$83,000 they need for Administrative  
2 Claims from my savings. I am aware that upon confirmation . . . they must deposit the sum of  
3 approximately \$83,000 at Effective Date. I am ready, willing, and able to make that deposit  
4 (Daughter's Declaration, page 1, line 23-page 3, line 2).

5 On September 25, 2014 the court entered an Order Confirming Debtors' Plan Of  
6 Reorganization ("Confirmation Order")(Docket#887).

7 Pursuant to the Plan payment of administrative claims, including the Administrative  
8 Claim of Campeau Goodsell Smith (Docket#835), was due within 15 days of the Effective  
9 Date and the Effective Date was the date of entry of the Confirmation Order. As the  
10 Confirmation Order was entered on September 25, 2014 the Effective Date of the Confirmed  
11 Plan was September 15, 2014 and the payment was due on or before October 10, 2014.

12 Informal inquiry was made to Debtors' counsel on October 15, 2014 without a  
13 response.

14 On October 16, 2014 CGS filed and served a Preliminary Notice of Default/non-  
15 payment of Confirmed Chapter 11 Plan Relative to Payment of the Administrative Claim of  
16 Campeau Goodsell Smith (Docket#891).

17 On October 20, 2014 CGS filed and served a Notice of Default/non-payment of  
18 Confirmed Chapter 11 Plan Relative to Payment of the Administrative Claim of Campeau  
19 Goodsell Smith (Docket#892).

20 On October 17, 2014 CGS spoke with Debtors' counsel and was informed that  
21 Debtors' daughter would not be funding the Plan until November 2014.

22 On November 4, 2014 Debtors' counsel indicated that payments on administrative  
23 claims were targeted for the following week.

24 As of the date of this Motion, CGS has not received any payment on its administrative  
25 claim.

26 As of the date of this Motion there is not any filing on the court's docket other than  
27 the August Monthly Operating Report (Docket#889)(filed October 3, 2014) to determine  
28 whether Debtors have any money.

### **III. The Confirmation Order Must Be Vacated.**

Pursuant to 28 U.S.C. 60 ("Rule 60") "the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
  - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59 (b);
  - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
  - (4) the judgment is void . . . ; or
  - (6) any other reason that justifies relief.”

CGS submits that the Motion must be granted and the Confirmation Order vacated pursuant to Rule 60.

## IV. Conclusion.

WHEREFORE, CGS submits that the Motion must be granted and the Confirmation Order vacated pursuant to Rule 60.

DATED: November 12, 2014

## CAMPEAU GOODSELL SMITH

By /s/ William J. Healy  
William J. Healy